



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

November 13, 1996

Ms. Gail Fenter
Assistant City Attorney
P.O. Box 1152
Midland, Texas 79702-1152

OR96-2092

Dear Ms. Fenter:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 102283.

The City of Midland (the "city") received an open records request for a particular police report pertaining to an incident of "offensive contact." Citing Open Records Decision Nos. 393 (1983) and 339 (1982) as authority, you contend that the requested information may be withheld pursuant to the common-law right of privacy, as incorporated into section 552.101 of the Government Code, because the report identifies a juvenile victim of a sexual offense.¹ Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

After reviewing the information at issue, we agree that Open Records Decision Nos. 393 (1983) and 339 (1982) govern the release of these records. In Open Records Decision No. 339 (1982), this office concluded that "common law privacy permits the withholding of the name of every victim of a serious sexual offense." *Cf. Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied) (identity of victim of sexual harassment protected by common-law privacy). Additionally, in Open Records Decision No. 393 (1982), which concerned the public release of a police report pertaining to the sexual assault of a child, this office concluded:

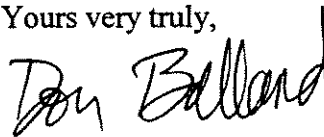
¹Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

The report at issue here consists almost entirely of detailed statements of the officers who investigated these crimes, and statements of the complainant, witnesses, and others. Each of these statements refers repeatedly to the victim of these crimes or to the victim's relatives, and each also contains abundant information *which could easily furnish a basis for identification of the victim*. . . . We conclude that the information which either identifies or would tend to identify the victim may be withheld under the common law right of privacy. We further conclude that this identifying information accounts for such a large part of the police report and is so inextricably intertwined with the remainder of this report that it would be unfeasible to attempt to separate the remainder and make it available. The nonidentifying information would, if separated, be devoid of meaning. We therefore conclude that you may deny this request in its entirety. [Emphasis added.]

As in Open Records Decision No. 393 (1993), we do not believe that in this instance it would be possible to protect the victim's common-law privacy interests by merely redacting the victim's name from the records at issue. Other information contained in the records would tend to identify the victim. Such disclosure would reveal "highly intimate or embarrassing information" about an identifiable individual. We therefore conclude that the city must withhold the entire police report under the Open Records Act pursuant to section 552.101 of the Government Code. *But see Star Telegram, Inc. v. Doe*, 915 S.W.2d 471, 474-475 (Tex. 1995).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Don Ballard
Assistant Attorney General
Open Records Division

JDB/RWP/ch

Ref.: ID# 102283

Enclosures: Submitted documents

cc: Ms. Susan R. Richardson
Cotton, Bleats, Tighe & Dawson
P.O. Box 2776
Midland, Texas 79702-2776
(w/o enclosures)